

Members

Rep. Jerry Denbo, Chairperson
Rep. John Frenz
Rep. Michael Murphy
Rep. Phil Hinkle
Sen. Luke Kenley
Sen. Teresa Lubbers
Sen. Lindel Hume
Sen. Richard Young



ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

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Authority: IC 2-5-18

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MEETING MINUTES¹

Meeting Date: November 13, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Jerry Denbo, Chairperson; Rep. John Frenz; Rep. Michael Murphy; Rep. Phil Hinkle; Sen. Luke Kenley; Sen. Teresa Lubbers.

Members Absent: Sen. Lindel Hume; Sen. Richard Young.

The Chairperson called the meeting to order at 10:10 a.m. and asked the members to introduce themselves. Then the Chairperson called on Mr. Larry McKee of the Department of Revenue to discuss a complaint which Senator Zakas had forwarded to the committee from constituents. Mr. McKee was accompanied by Karen Barthelmes. Mr. McKee explained that the constituents had filed returns electronically in February. In March they filed a paper return. The Department's computer system, when sending a billing statement, did not recognize the duplicate returns. For next year, the Department has set up a system which will pull the duplicates out to determine if preparers sent duplicates. The Chairperson commended the Department for addressing this issue. Senator Kenley said that he was glad to hear that the problem had been addressed. He also had heard from constituents on this matter.

The Chairperson next called on Attorney General Stephen Carter to discuss allegations of gasoline price gouging which occurred on September 11. The Attorney General provided an update in the

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

investigation in his office concerning excessive pricing. There was a very small percentage of stations involved - the number of complaints covered fewer than 2% of the 3,200 retail outlets in the state. He pointed out that it is important not to cast stones on the entire industry.

The Attorney General's office received 129 complaints. They investigated instances where the complaint alleged that the price was \$2.50 per gallon or more. Sometimes the information received in the complaints was not totally accurate. Most stations have been cooperative with the investigation. Some stations have made refunds where they actually knew who had made purchases. There were also cases where stations gave money to charities. The Attorney General has filed 39 civil investigative demands. 54 stations admitted that price gouging had occurred. 28 stations are giving refunds. 18 have given refunds but have not provided documentation to the Attorney General's office. Eight stations have not given refunds. Thirteen have denied pricing at the high level and have provided no documentation. Seven stations denied price gouging and provided documentation, but there is not sufficient information to clear them. (Exhibits 1, 2, and 3 - available in Legislative Information Center in Room 230 of the State House.)

Attorney General Carter indicated that his approach has been that these complaints need to be handled on a case by case basis. When looking for remedies, he believes it is important to be sure that each case is considered separately.

The Attorney General said that under current law his office was investigating complaints under the deceptive practice statutes governing unequal bargaining. It is difficult to claim unequal bargaining since buyers can, in most instances, just go down the street to find another seller. This may require more definition for the future.

In response to questions from the Chairperson, the Attorney General said that the current law is sufficient in certain circumstances, however, more definition is needed. The Attorney General was not aware of action being taken in other states but indicated that in December attorneys general would be meeting at which time more information would be available.

Representative Hinkle commended the Attorney General for quick action to keep prices under control and asked for some reasons why gasoline prices were changing so greatly. Attorney General Carter said that there were representatives of the fuel industry present who could answer the price fluctuation question.

There was discussion concerning the fact that some of the gas stations where there had been complaints concerning price gouging had made contributions to charities and had not made restitution. This happened in a few situations where specific customers could not be identified for restitution. The members of the Committee did not feel that this was an appropriate means of making restitution.

There was discussion as to why the Attorney General had chosen \$2.50 as the threshold for investigating complaints. He explained that there were reports that the price for purchasing fuel might increase by eighty cents. That would put normal prices in the \$1.60 to \$1.70 range. The \$2.50 was enough higher to raise concerns.

In response to questions, the Attorney General indicated that some states have laws which deal with natural disorders. He thinks the identification of specific, unforeseen events is important to declaring an emergency. Prices are set in the market place for most goods, and that is working well except when someone takes advantage of a tragedy. There was some discussion of the adequacy of the \$500 fine in current law and whether it should be levied per incident.

The Chairperson called on Mr. Mike Pitts, Indiana Petroleum Marketers and Convenience Store Association, to address the committee. Mr. Pitts stated that there was a tremendous over reaction

to fuel prices on September 11. Many people in the distribution chain were concerned that we would be in a Gulf War situation where prices shot up. He indicated that his association appreciated the Attorney General's handling of the situation by checking each complaint thoroughly. Mr. Pitts pointed out that less than 1.5% of stations statewide had complaints lodged against them. The media helped put consumers in a panic. His association does not believe that additional legislation is necessary. Those who acted irresponsibly are being punished in the marketplace with consumer boycotts, etc. His association has pledged to work with the Attorney General on this issue. Small family businesses are the backbone of the industry, and because of overall price fluctuations, many are having to sell out. On the issue of proper restitution, he pointed out that the branded stations have a two-thirds to three-fourths use of credit cards. The cash to credit card ratio changes for the small stations, making restitution harder.

Mr. Stan Pinegar, Indiana Petroleum Council, spoke next. Mr. Pinegar indicated that he would be happy to answer questions. Over the last several years there have been complaints over fluctuation in fuel prices. People want stable prices, but the instability in prices is likely to continue. In the Midwest, fluctuation is related to infrastructure in the industry.

The following issues were discussed:

- legislation to address emergency situations
- should other commodities like food be included in any legislation
- in normal times the marketplace can handle prices without interference
- there is a very fine line for government in identifying situations where the free market cannot take care of prices
- any definition of "crisis" or "emergency" needs to be carefully constructed

Senator Kenley made a motion which was seconded by Representative Murphy to pursue legislation to cover price gouging. The motion passed unanimously.

The next item for discussion was the expiration of administrative rules under IC 2-22-2.5. (Exhibit 4 - available in Legislative Information Center in Room 230 of the State House.) Joyce Martin, Chief Counsel for Governor O'Bannon, opened her remarks by congratulating Linda Miller on the excellent job the Administrative Code Division had done with the process. Ms. Martin informed the committee that December 5 was the deadline by which agencies must request an executive order to prevent the expiration of any rules which had not been readopted.

Mr. Greg Zoeller represented the Attorney General's office in the discussion of expiration of rules. The advisory section of the Attorney General's office advised all agencies, boards, and commissions of the need to take action on rules.

During the committee discussion, there was concern that rules which have significant economic impact, like the Alcohol and Tobacco Commission Rule 28, should not be allowed to expire without public notice and review.

Mr. Grant Monahan, Indiana Retail Council, Inc., said that he had not testified at the previous meeting which dealt with Rule 28. He urged the committee to do something to clean up the process so that the public would have input.

During discussion, members expressed concern that if a hearing on rules set to expire could be requested by anyone, someone could force a hearing on every rule. Requiring a dollar threshold as a prerequisite for receiving a hearing was discussed.

The Chairperson asked Senators Lubbers and Hume and Representatives Frenz and Murphy to look into a bill draft.

In other business, Representative Frenz indicated that there was a problem with a Department of Education rule concerning signs on school buses. Apparently someone was interpreting a rule designed to prevent commercial signs on school buses to include banners and the American flag. After calls to the Department of Education, it was indicated that the enforcement of any rule which could be interpreted to prohibit the display of flags would be relaxed. Representative Frenz stated that he would pursue this further with the Department of Education.

An additional meeting was called for Friday, November 16, at 11:00 a.m. to further consider price gouging legislation and the expiration of rules. The meeting was adjourned at 12:30 p.m.